

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA,

5 v.

11 Cr. 1032 (PAE)

6 LEONIDES SIERRA, et al.,

7 Defendants.

8 -----x
9 New York, N.Y.
10 November 1, 2013
11 3:44 p.m.

12 Before:

13 HON. PAUL A. ENGELMAYER,

14 District Judge

15 APPEARANCES

16 PREET BHARARA

17 United States Attorney for the
18 Southern District of New York

NOLA HELLER

JESSICA ORTIZ

19 Assistant United States Attorneys

LEE GINSBERG

20 Attorney for Defendant Luis Beltran

GARY VILLANUEVA

21 Attorney for Defendant Manuel Geraldo

CESEAR de CASTRO

22 Attorney for Defendant Lenin Morel

JAMES BRANDEN

BEVERLY VAN NESS

23 Attorneys for Defendant Jugo Cespedes

1 APPEARANCES (Continued)

2 ERIK ZISSU
3 Attorney for Defendant Hargelis Vargas

4 ALSO PRESENT:

5 EMMA M. GREENWOOD
6 Coordinating Attorney

7 CRISTINA WEISZ, Spanish interpreter
8 ISOLINA BERNHANDT, Spanish interpreter

1 (In open court)

2 THE DEPUTY CLERK: United States v. Leonides Sierra,
3 et al., (S5)11 Cr. 1032.

4 Government ready?

5 MS. HELLER: Yes. Good afternoon again, your Honor.
6 Nola Heller and Jessica Ortiz for the United States.

7 THE COURT: Good afternoon again.

8 THE DEPUTY CLERK: For defendant Luis Beltran.

9 MR. GINSBERG: Good afternoon, your Honor, Lee
10 Ginsberg. I'm appearing for myself obviously and my partner
11 ^Louis Freeman.

12 THE COURT: Very good. Good afternoon.

13 MR. GINSBERG: Good afternoon.

14 THE DEPUTY CLERK: For defendant Manuel Geraldo.

15 MR. VILLANUEVA: Good afternoon, your Honor. My name
16 is Gary Villaneuva appearing for Mr. Geraldo.

17 THE COURT: Good afternoon.

18 THE DEPUTY CLERK: For defendant Lenin Morel.

19 MR. de CASTRO: For Mr. Morel, Cesear de Castro.

20 THE COURT: Good afternoon.

21 THE DEPUTY CLERK: For defendant Jugo Cespedes.

22 MR. BRANDEN: Good afternoon, your Honor. Jim Branden
23 for Mr. Cespedes. I'm with learned counsel Beverly Van Ness.

24 THE COURT: Good afternoon.

25 THE DEPUTY CLERK: For defendant Hargelis Vargas.

1 MR. ZISSU: Good afternoon, your Honor. Eric Zissu
2 for the defendant Hargelis Vargas.

3 THE COURT: Good afternoon. Good afternoon to you.

4 MS. GREENWOOD: Good afternoon, your Honor. Emma
5 Greenwood, the court agent discovery attorney for the defense.

6 THE COURT: Good afternoon. Let me also wish good
7 afternoon to the defendants.

8 All right. This is the second of the conferences in
9 this case that I have held today. I held one earlier at 2
10 o'clock and covered the same ground that I am going to cover at
11 today's conference. I didn't make any decisions save a
12 discrete scheduling decision as to some other defendants at
13 that conference because I wanted to make sure that I had
14 heard from counsel here before making any decision as to any
15 point.

16 Let me just recap for everyone what I'm going to cover
17 today. First of all, for the benefit really of the defendants,
18 I'm going to review the developments in the case since our last
19 conferences in July. Then I'm going to call on the government
20 and coordinating discovery counsel, Ms. Greenwood, briefly to
21 update us on discovery issues in the case. And I'll open the
22 floor to defense counsel to raise any issues regarding the
23 provision to them of the practical access to Rule 16 discovery.

24 I'm going to then call on the government and the
25 defense to update me on the status of the capital review

1 process and the status of mitigation submissions in the case.

2 I will then turn to what I regard as the most
3 important issues before me today, which involves setting trial
4 dates for the murder defendants and the right configurations of
5 murder defendant units at trial.

6 I also intend to solicit views, if any, on the
7 practices that I should have going forward now that the
8 defendants will have been broken out into different trial
9 groups in terms of meeting together versus separately.

10 I also want to briefly say a word about pending
11 motions with regard to defendants Ramon Lizardi and defendant
12 Miguel Delance, who were at the previous conference.

13 Then I'll open the floor to counsel to raise any
14 topics that I haven't anticipated today. As you know, I'm
15 always happy to hear individuals' specific issues relating to
16 representation, bail, discovery, whatnot, but if it's really a
17 one-off issue relating to an individual defendant, my
18 preference is it be raised at an individual conference and not
19 in the presence of the large group.

20 Finally at the end I want to report to you the date
21 I've set for the next conference and confirm for all of you the
22 exclusion of time that I have done for the entire murder
23 defendants group for that next conference.

24 So with that, really for the benefit of the
25 defendants, let me take a few minutes and recap for you from my

1 perspective what has happened in the case between the last
2 conferences, which were held on July 9th and July 12th, and
3 now.

4 Just a bit of history. For the Group A defendants who
5 had been scheduled for trial on January 7th, as you will
6 recall, all of them pled guilty. At this point I believe all
7 but one of them has been sentenced.

8 As to the first group of Group B defendants, the Group
9 B nonmurder defendants, these are the people who had been
10 charged in the original indictment of December 2011, they had
11 been scheduled to go to trial in early June. Each of them
12 ultimately pled guilty as of today. By my count, all but two
13 of them have been sentenced.

14 Finally, as of the last conference in July, there had
15 been a trial scheduled for the second group of Group B
16 nonmurder defendants. These are defendants who had been
17 charged in the superseding indictment returned in December of
18 2012.

19 Those defendants had been scheduled to begin trial
20 this past September 16th. Ultimately each of those cases too
21 was resolved without trial. I have not yet had occasion to
22 sentence any of those defendants; however, the sentencing
23 hearings for those defendants are scheduled shortly.

24 Thus, where we're left is that the only remaining
25 defendants in the case who have been apprehended and therefore

1 are before me and who have unresolved issues of guilt or
2 innocence is the murder defendants.

3 Another development to report since the last
4 conferences in July is that I issued a decision on a discovery
5 dispute motion brought by defendant Carlos Urena. The issue
6 had to do with whether a particular tape of a 9-1-1 call
7 relating to the murder of a Ka'Shawn Phillips constituted Rule
8 16 material as opposed to the Jencks Act material. I held that
9 the tape was Rule 16 material and, therefore, subject to the
10 terms of Rule 16 with regard to a pretrial discovery. However,
11 as to a pointed dispute as to that tape, I upheld the
12 government's decision to redact from that tape certain
13 identifying information as to that caller. I did authorize
14 counsel for Mr. Urena if he wanted to take up that issue
15 again to do so, and I understand he may at some point down the
16 road.

17 The final development to report between July and now
18 is that I have set a trial date for three defendants who will
19 go to trial on March 10. And they are the defendants who are
20 implicated in the Ka'Shawn Phillips murder: Specifically,
21 Carlos Urena, Juan Franco and Limet Vasquez.

22 As you will recall, at the July conferences, counsel
23 for those defendants asked that a trial date be set for them.
24 I couldn't do so at the time or it wasn't responsible to do so
25 because the capital review process was as yet not completed.

1 However, I've since been notified by the government that the
2 Department of Justice has decided not to pursue the death
3 penalty as to those three defendants. As a result, after
4 soliciting the views of the government and the defense as to a
5 trial date, I set down the date of those three defendants'
6 trial to begin on Monday, March 10, 2014. The government has
7 estimated that that trial will last between three and four
8 weeks.

9 I have set a schedule for pretrial motions in that
10 case in which initial defense motions are due on November 22nd,
11 and earlier today I set down a conference for those three
12 defendants for November 15th.

13 That catches us up, I think, up till now. So what I'd
14 now like to do is just briefly get a report as to discovery.
15 Again, I asked the government to report on this last time, but
16 I'll ask you the same question. I'm interested in getting a
17 report from you on whether there has been any additional Rule
18 16 discovery obtained or that's in the process of being
19 obtained since the July conference and whether you're aware of
20 any issues that have arisen with regard to the provision or
21 access to the defense of that discovery.

22 MS. HELLER: Your Honor, there has been no additional
23 discovery provided since the July conferences and we're not
24 aware of any outstanding disputes.

25 THE COURT: All right. Very good.

1 Ms. Greenwood, let me just call on you.

2 Ms. Greenwood had submitted to me a memo that briefly
3 described her activities between July and now, which included
4 updating the database tools that she has developed to make the
5 defense's lot in viewing the various discovery materials
6 easier.

7 Again, I thank you for all of your hard work.

8 She also described the removal of various defendants
9 who have pled guilty from the discovery list served and a
10 variety of other organizational steps.

11 Ms. Greenwood, anything to report beyond that on your
12 end and are you aware of any practical problems that the
13 defense or their defendants are experiencing and accessing
14 discovery?

15 MS. GREENWOOD: I am not aware, your Honor, of any
16 issues with the clients or counsel for that matter accessing
17 any of the discovery. Everything that the government has
18 provided to me has been distributed to counsel.

19 THE COURT: Okay. Thank you. Again, I appreciate all
20 your hard work.

21 Let me then turn the floor to defense counsel. When I
22 had the conference earlier today, I was pleased not to have any
23 reports of any practical impediments and the only issue that
24 came up was one counsel raising the question of the timing at
25 which certain 9-1-1 tape recordings, which the government is

1 attempting to obtain, will be provided to them. Other than
2 that, there were no discovery issues raised.

3 Do any of you have any discovery issues that you want
4 to put on the table now?

5 MR. de CASTRO: No, your Honor.

6 THE COURT: Very good. Thank you.

7 The next topic I want to raise is the capital review
8 process. On July 18th, following the last set of conferences
9 in this case, I issued an order that set February 3rd, 2014, as
10 the final deadline for defendants to make mitigation
11 submissions. That was also the date that a number of defense
12 counsel had asked me to set.

13 My order noted that the longer it took, though, for a
14 defendant to make a mitigation submission, the longer it likely
15 would take for the Attorney General to render a decision. As a
16 result, I directed that although the defense had until the
17 beginning of February to make any mitigation submissions, any
18 defense counsel that intended to make a mitigation submission
19 after today, November 1st, was required by today to submit to
20 me a sworn declaration attesting -- and I'll quote my order --
21 "that his or her client is aware of the potential impact on the
22 trial schedule of making a mitigation submission after that
23 date and approves of the decision to do so."

24 I recited for the record at the last conference that
25 as of 2:30 today, I had not received any such sworn

1 declarations from defense counsel.

2 Turning to the government, your letter of October 24th
3 recites that there are 11 defendants who are capital eligible
4 as to whom the Attorney General had not rendered a decision
5 whether to seek a death penalty and that you had received as of
6 October 24th only two mitigation submissions.

7 I believe, Ms. Heller, that you represented to me that
8 in the weeks since then, you've received one more?

9 MS. HELLER: Yes, your Honor. Today we received a
10 mitigation submission on behalf of Jugo Cespedes. So in this
11 group here, we have mitigation submissions from Mr. Geraldo and
12 Mr. Cespedes, but not as to Mr. Beltran.

13 THE COURT: So Mr. Beltran is the only defendant as to
14 whom there has been no mitigation submission as to whom that's
15 a relevant concept in this group?

16 MS. HELLER: In this group, yes, your Honor.

17 THE COURT: Very good.

18 Mr. Beltran -- that's, I guess, Mr. Ginsberg?

19 MR. GINSBERG: Yes, your Honor.

20 THE COURT: May I ask you what your intention is with
21 regard to the filing of the mitigation submission?

22 MR. GINSBERG: All the mitigation work has been
23 completed and I believe I should be able to make my submission
24 within the next ten days. Since the July date I've had two
25 trials, just finishing the last one yesterday. So now I'm

1 gathering all of the material and I'll write the report.

2 THE COURT: All right. I'm glad to hear it. Just to
3 ensure compliance with the order that I issued, would you
4 please just obtain for me the declaration I described that
5 explains that your client is aware of the consequences
6 potentially of the making of the mitigation submission after
7 November 1st? And please get that to me within several days.

8 MR. GINSBERG: If I think I'm going to have my
9 submission in within the next week or so, can I put the
10 submission in without having the declaration as well?

11 THE COURT: You know, I'm going to ask you to do it if
12 only because I think there were several at the last conference
13 who were in the same boat, so I'd like to treat you
14 symmetrically. I understand that if your submission comes in
15 only a week after the November 1st date, the likely delay
16 caused by that is no more than likely a week, but nevertheless
17 as a matter of good form I'd like to hold you to the same
18 standards as the other counsel.

19 MR. GINSBERG: Very good.

20 THE COURT: Okay. I asked government counsel whether
21 it had-- whether since October 24th the Attorney General had
22 reported any further decisions as to the capital charges with
23 regard to any of the defendants in this case. The answer was
24 no. In effect, the only defendants at this conference or the
25 one at 2 o'clock as to whom any such decisions had been

1 reported are the three who are going to trial on March 10th.

2 Also, just for the benefit of the defendants, the
3 government's letter of October 24th stated that in order to
4 expedite the capital review process, the government was
5 preparing a group or global submission that it intends to
6 submit to the Department of Justice in November. And we
7 expects, if ordinary form follows, to receive an answer between
8 12 and 16 weeks from then, which would put us perhaps in March.

9 And I asked Ms. Heller whether that submission would
10 potentially put the Attorney General in a position to make a
11 decision as to all of the defendants in this case who are
12 potentially facing capital charges with or without a mitigation
13 submission and the answer was, yes, that it potentially would
14 do so.

15 So that's where we're at as to the capital review
16 process.

17 The next issue involves the setting of trial
18 configurations and schedules. And, again, I'm going to recap
19 what I covered at the last conference. As I mentioned, I've
20 set the March 10th trial date for defendants Carlos Urena, Juan
21 Franco and Limet Vasquez. And I want to put on the record here
22 as I did at the last conference the reasons I did that.

23 Those three defendants had specifically requested back
24 in July that a trial date be set for them and I wanted to honor
25 that preference, that request.

1 Second, the capital review process as to those three
2 defendants was complete.

3 Third, the Phillips murder, in which all three of them
4 are said to have been complicit, supplied a valid basis for
5 joining those three defendants at a trial to be held soon.

6 That joinder is without prejudice to the right of any
7 of those defendants to seek a severance, of course. The
8 government had proposed as an alternative that I join those
9 three defendants with, I think, four others who are implicated
10 in the murder of ^Miguel Perez.

11 That was to my mind a plausible credible option, but
12 ultimately I decided to try the two cases separately for these
13 reasons: First, it didn't appear that combining the two cases
14 for trial would cut down on trial time. Each of the two trials
15 was estimated to be at least three to four weeks. The joint
16 trial was estimated to last two months. So it didn't look like
17 we were going to reduce trial time.

18 At the same time, a joint trial would force twice as
19 many defendants and twice as many defense counsel to sit
20 through a two-month trial rather than sitting through a
21 one-month trial. So from an efficiency point of view, there
22 was not a net gain and perhaps a net loss. A two-month trial
23 loss in my experience would not negate the process of jury
24 selection. It's simply a lot easier with a three- or four-week
25 trial.

1 A seven-defendant trial also potentially would
2 compromise the ability of the jurors to keep their eyes focused
3 on the guilt or innocence of each individual defendant.

4 Finally, one of the defendants implicated in the Perez
5 murder, Ramon Lizardi, is subject and remains subject to the
6 capital review process. I didn't want that process to delay
7 any further getting defendants Urena, Franco and Vasquez to
8 trial. Those were the reasons I broke out that group as the
9 first group to be tried. And I've set, as I said earlier, a
10 conference date for that group which henceforth will not be
11 conferencing with the large group but just on its own.

12 Now, in my order of October 18, I asked the government
13 to propose trial configurations for the other defendants,
14 including those here in this room, and a logical sequencing of
15 the trials.

16 The government on October 24th in its letter gave me
17 its proposed sequencing and clustering of the defendants for
18 trial. And I thought that letter was extremely thoughtful and
19 helpful. In my order I invited defense counsel to comment in
20 writing on the government's proposed trial sequence and
21 configuration. I asked defense counsel to do so by this
22 Wednesday, October 30th.

23 I also directed any defense counsel who is now seeking
24 the setting of a trial date for his or her client to let me
25 know so in writing, again by October 30th. I did not receive

1 any defense submissions in response to either of those
2 directives.

3 In light of that, having given a lot of thought to it,
4 let me tell you, as I did the counsel at the previous
5 conference, what my present intention is vis-a-vis the setting
6 of trial dates in this case.

7 First of all, I intend next week to issue an order
8 that sets a trial schedule for the remaining defendants in this
9 case broken out into different configurations. Why am I doing
10 that? Setting trial dates now helps assure a speedy trial.

11 I am mindful that, putting aside the March 10 trial
12 defendants, only one defendant of the murder defendants, Maria
13 Mejia, even requested that I submit a trial date.
14 Nevertheless, my view is that I have an independent
15 responsibility to assure the speedy trial interests of the
16 defense. The sooner I can get trials down on the calendar, the
17 sooner the trials will be held.

18 I'm also very much mindful that there are a lot of
19 defendants and a lot of counsel whose schedules need to be
20 accommodated. The sooner I set the case down for trial, the
21 better it guards against scheduling delay and scheduling
22 conflict. And I would note that although no defense counsel
23 asked me to set a trial date, no counsel asked me not to do
24 so.

25 My intention is to configure the various trials

1 consistent with the configurations that the government proposed
2 in its March 24th letter. I find the configurations to be
3 logical. There appear to be logical connections that justify
4 the joinder of the defendants in each group with the others in
5 that group. The lengths of the trials that the government
6 envisions are also to my mind manageable.

7 That said, of course I'm reserving the right of any
8 defendant to move for severance. I'm open to hearing arguments
9 for severance. If there is a persuasive meritorious argument
10 for an individual defendant and there's a severance, of course
11 I'll grant it. If and when that point comes, we would then
12 figure out whether such a severed defendant belongs in a trial
13 by himself or herself or appended to a different group.

14 I'm also mindful, as I said at the last conference,
15 that the capital review process is underway. In the event the
16 Attorney General decides to pursue the death penalty against an
17 individual defendant, I would likely need to revise the trial
18 schedule at least as to that defendant. We will cross that
19 bridge when and if we come to it.

20 My premise in setting the schedule that I'm about to
21 set is that capital charges will not be pursued against anyone.
22 In acting on that premise, I'm not of course expressing a view
23 as to what the right outcome is in the matters before the
24 Attorney General. I'm merely trying to set a rational schedule
25 based on what I regard as reasonable assumptions about what may

1 happen.

2 So as to the sequence of the trials, I expect to set
3 them in the sequence proposed by the government with one
4 exception. Specifically I expect to set the trial that the
5 government identifies as proposed trial three, which involves
6 one defendant, Julian Lopez, ahead of the trial that the
7 government identifies as proposed trial two, which involves
8 four defendants: Maria Mejia, Lenin Morel, Ramon Lizardi and
9 Miguel Delance.

10 The Lopez trial is focused on one murder, that of
11 ^Isse Dominguez. I had said at the earlier conference that I
12 intended to set that case down for May, which would still be my
13 preference. That would create some space between the end of
14 the March 10th trial and the beginning of the next trial. It
15 may be that that trial pushes to April. We'll see just based
16 on the scheduling issue presented by counsel for that
17 defendant, but I'll work on that.

18 But the reason I'm expediting the Lopez trial ahead of
19 the proposed trial two with those four defendants is this:
20 First, Julian Lopez is not subject to the capital review
21 process. That process, therefore, will not complicate the
22 setting of a trial date for him. By contrast, one of the
23 defendants in what the government has called proposed trial
24 number two, Mr. Lizardi, is subject to the capital review
25 process. The government forecasts that that process may not

1 run its course until some 12 to 16 weeks after the government's
2 submission later this month of proposed global recommendations.

3 Second, as a matter of scheduling, the Lopez trial is
4 shorter. It's a better fit for the Court's existing schedule
5 in May -- or, for that matter, April -- than the four-defendant
6 longer trial. I expect to set the trial for defendants Mejia,
7 Morel, Lizardi and Delance in all likelihood for July, creating
8 some space between the May and the July trials. The July trial
9 is supposed to last three weeks.

10 Again, I'm going to be sitting down and trying to come
11 up with concrete dates. Basically we're looking at the March
12 10 trial for the Urena group, either April or May for Lopez,
13 and then the beginning of July for the proposed trial three.
14 Two, rather. The Maria Mejia, Lenin Morel, Ramon Lizardi and
15 Miguel Delance group.

16 As to proposed trial four, which contains nine
17 defendants, I expect, as the government has proposed, that I
18 set that down to start in December 2014. Those defendants are
19 Felix Lopez-Cabrera, Luis Beltran, Javier Beltran, Michael
20 Cabrera, Miguel Strong, Yandel Silverio, Carlos Lopez, Andry
21 Lazala and Raymond Sosa. The government expects that that
22 trial will last between two and three months. It is focused on
23 multiple murders, the murders of ^Ramon ^Cassul, David ^Avilla,
24 Gomez ^Irving Cruz, ^Raffe Tavarez and Freddie ^Polanco, among
25 other charged defenses. A September trial date will give

1 plenty of time for the capital review process to run its course
2 with respect to those of those nine defendants who were part of
3 that group who were subject to the capital review process.

4 I've stated, as you know, a number of times that my
5 preference is not to have joint trials involving more than
6 approximately five defendants, but at this early stage it seems
7 to me safe to set down nine for trial. I operate on the
8 assumption, which is very well-grounded in the experience of
9 this case anyway, that not all nine defendants are likely to
10 ultimately go to trial and that the number of defendants will
11 thin out. If that proves wrong and we have nine or close to
12 nine defendants that ultimately goes to trial, I will then
13 decide how to proceed and whether to break off some defendants
14 into a separate unit.

15 Finally, I expect to set down the proposed trial
16 number five as the government has proposed for January 2015.
17 That trial involves five defendants: Raymond Sosa, Hargelis
18 Vargas, Manuel Geraldo, Anderson Abreu and Jugo Cespedes. It
19 is focused on the murder of Orlando ^Celegado and other charged
20 offenses.

21 Under this configuration, Mr. Sosa would be subject to
22 two trials. Everyone else would be tried in just one case. My
23 assessment, given the overlapping charges here and the sheer
24 size of the case, is that this is actually quite efficient to
25 have one defendant where there is a need for multiple trials.

1 And I had a colloquy briefly with Mr. Sosa's counsel about
2 accommodating her schedule needs at the last conference.

3 So with regard to all that, those are my current
4 inclinations, but I intend to think on it over the weekend and
5 issue an order early next week.

6 Let me ask the defense counsel over here if they have
7 any feedback for me now as to the schedule.

8 MR. de CASTRO: For defendant Lenin Morel, I only have
9 one question, which is you had mentioned April or May for the
10 Lopez trial.

11 THE COURT: Right.

12 MR. de CASTRO: Is there a chance that the July
13 proposed date would be moved up to June?

14 THE COURT: No. I think what I'm inclined to do is to
15 keep your group for early July. Conceivably one counsel at the
16 last conference referenced a particular scheduling issue. And
17 it may be that I, for example, move jury selection to the week
18 earlier so that the actual trial of the case begins at the
19 beginning of July. But my instinct is for a variety of
20 reasons, including the ones I've stated, it makes sense to have
21 that trial in July. So I'm likely to do that. But, again, by
22 early to mid next week, I'll have an order that clarifies it.

23 I take it you don't have a trial conflict?

24 MR. de CASTRO: No, I'm fine either way.

25 THE COURT: Glad to hear it.

1 I think that makes sense. One member of that group is
2 subject to the capital review process. The government
3 persuasively explains why those defendants logically ought to
4 be tried together. I can't have any assurance that the capital
5 review process will run its course for that group until, even
6 on the government's estimate, late March and there's no
7 assurance of that. It seems to me a rational thing to do, to
8 put this group down at a date when we will have certainty that
9 the process has run its course.

10 MR. de CASTRO: I agree.

11 THE COURT: I'm not seeing anyone else rise.

12 All right. In terms of working configurations going
13 forward, what I'm going to do is break out as separate units,
14 not conferencing with the large group, the Urena group, the
15 group that's going to trial on March 10th, and also the Lopez
16 group, the one-defendant trial.

17 The rest of the defendants -- those in the third,
18 fourth and fifth trial, the ones I'm currently anticipating for
19 July, September and next January -- will, for the time being,
20 continue to conference together. But in fairly short order,
21 probably after the next group conference, I will break out at
22 least the first of that group, the July group that, for example
23 was just the subject of my colloquy with counsel for Lenin
24 Morel.

25 Any reason not proceed in that fashion?

1 MR. de CASTRO: No.

2 THE COURT: At the last conference I also mentioned
3 there are two pending sets of motions, both seeking either
4 Brady particulars or discovery. One is from defendant Lizardi,
5 and I have the government's response. The other is from
6 defendant Delance, and the government at the last conference
7 promised to get me its response by November 15th. And I expect
8 in fairly short order to turn to those two motions together.

9 So that covers at great length the topics that I had
10 from my perspective for all of you.

11 Are there other issues that counsel want to raise with
12 me?

13 Okay. All right. Very good.

14 At the last conference, I set down our next
15 conferences in this case for July the 7th-- excuse me, February
16 the 7th, one at 11 a.m. and one at 12:30 p.m.

17 MS. HELLER: Your Honor, the government would propose
18 to have a single conference because we're losing four
19 defendants. It basically would be the same number as we had in
20 the first conference today. It might make everything easier,
21 especially for the Court.

22 THE COURT: I appreciate your solicitude and you're
23 right. That's fine. Why don't you try-- we also now have the
24 larger ceremonial courtrooms in this building. That's fine
25 with me. I'll clarify that in an order. You've been usually

1 having defense counsel reach out to the government to sort out
2 who's going when, so if you could just ask everyone to be there
3 at 11. That's sensible.

4 MS. HELLER: Most people prefer the first conference.

5 THE COURT: That's when the action happens and that's
6 when I'm not just a newsreader. So that's appreciated. Very
7 good.

8 Then I guess the issue is just the exclusion of time.
9 The government moved at the last conference that time be
10 excluded for all murder defendants until the next conference.
11 I put on the record the variety of reasons why that's justified
12 which involve the capital review process, the need for
13 defendants now that they will soon be in trial configurations
14 to begin to mobilize for trial, the continued review of
15 discovery, the pending several motions and the likelihood of
16 others.

17 Does any defense counsel object to the exclusion of
18 time until February the 7th?

19 MR. GINSBERG: No.

20 MR. de CASTRO: No.

21 THE COURT: Okay. Thank you. One moment.

22 (Pause)

23 THE COURT: All right. Is there anything further from
24 the government?

25 MS. HELLER: No, your Honor. Thank you.

1 THE COURT: Anything from the defense?

2 MR. GINSBERG: No, your Honor.

3 THE COURT: All right. We stand adjourned.

4 (Adjourned)

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